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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,023	12/28/2001	Michael J. Hopmeier	38587.0029	3820
25227	7590	09/08/2004	EXAMINER	
MORRISON & FOERSTER LLP 1650 TYSONS BOULEVARD SUITE 300 MCLEAN, VA 22102			CROSS, LATOYA I	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/029,023

Applicant(s)

HOPMEIER, MICHAEL J.

Examiner

LaToya I. Cross

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to Applicants' amendments filed on June 7, 2004.

Claims 1-20 are pending.

Withdrawal of Rejections from Previous Office Action

- The obviousness rejection over Dooley et al in view of Lee et al is withdrawn in view of Applicant's argument that Dooley et al and Lee et al are not properly combinable since Dooley et al is directed to detecting contamination in a water supply and Lee et al is directed to detecting contamination in crops.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 8, 9, 11-15 and 17-20 rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,942,440 to Dooley et al.

Dooley et al teach a system and method for detecting contaminants in a water supply, such as lakes, ponds, streams, creeks, etc. These water supplies are considered to be geographical areas. The method involves placing a plurality of sampling units in the water supply at different locations. The sampling units absorb contaminants present in the water (col. 17, lines 13-36). After collection, the contaminants are analyzed by a gas analyzer, which

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may be directly connected to the sampling unit (col. 20, lines 51-53; col. 21, lines 27-30). The contaminants to be detected include those such as methane, benzene and petroleum-based products. See col. 1, lines 29-37; col. 3, lines 12-29 and col. 9, lines 3-15. With respect to claim 8, Dooley et al teach that any number of sampling units may be used to absorb contaminants. Increasing the number of sampling units used will enhance the contamination profile of the sample and allow for a more accurate determination of site-specific remediation (col. 26, lines 18-22). With respect to claim 15, where Applicants claim the additional step of taking action to protect the agricultural operation, Dooley et al teach that after the results of gas analysis are obtained, a pollution map is created and a plan for remediation is developed. With respect to claims 17 and 20, the gas analyzer provides a control system, connected to each of the sampling units that provide an output for the user on the results of the analyses. With respect to claim 19, the sampling unit allows a portion of the water supply to enter and the contaminants from that portion are absorbed and analyzed.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dooley et al.

The disclosure of Dooley et al is described in detail above. Dooley et al differ from the instantly claimed invention in that there is no disclosure of detecting contaminants in animals, such as cattle, chicken, ducks, horses, pigs or sheep. However, since Dooley et al teach detecting contaminants in a water supply system, such as lakes, ponds, streams and

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creeks, it would have been obvious to one of ordinary skill in the art to test animals that may consume water from these sources as well. For instances, where contamination may be found in the water supply, the animals that consumed the water may also be contaminated. Thus, it would have been obvious to extend the testing for contamination to the animals that consumed the water to determine which animals may have been contaminated and thus assure that no contamination is passed onto the humans who may consume the animal meat.

5. Claims 1-4, 6, 7, 9, 10-12, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,789,183 to Lee et al in view of US Patent 6,75,576 to Hall et al.

Lee et al teach a method for detecting and identifying rice blasts, spores and fungus in rice crops. The method also detects movement of spores into and within a specific area (col. 24, lines 59-67). The method uses field test kits having test wells that are coated with monoclonal antibodies, which serve as sensors for a particular rice blast race (col. 23, lines 61-67; col. 24, lines 1-44). Spores, blasts and fungus are all contaminants that may be used in biological warfare threats to crops. Lee et al teach that early detection of blasts, spores or fungus is necessary to eradicate the problem by using fungicides to save the crop (col. 2, lines 5-15).

Lee et al differ from the instant invention in that there is no disclosure of multiple sensors being dispersed within the rice crop fields.

Hall et al teach an on-site agricultural product analysis system. The system of Hall et al comprises dispersing multiple sensors at different locations throughout an agricultural field to determine the characteristics of the crop (col. 4, lines 40-63). The multiple sensors send data regarding the conditions of the crop to a central processor which is then posted on a display to

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be read by the user. In having multiple sensors located in various places throughout the fields, Hall et al teach that data regarding the conditions of the crops can be obtained remotely and in a faster amount of time than collecting samples and testing samples in a laboratory.

Thus, it would have been obvious to one of ordinary skill in the art to disperse several portable sensors in the crop fields and remotely detect for the presence of blasts, spores or fungus that may be used in biological warfare. Having the sensors in the field would allow the tests to be conducted remotely (thus preventing harmful exposure) in a manner fast enough to detect the harmful agents and treat the problem or prevent further exposure.

Response to Arguments

6. Applicant's arguments filed on June 7, 2004 have been fully considered but they are not persuasive.

With respect to the anticipatory rejection over Dooley et al and the obviousness rejection over Dooley et al in view of Lee et al, Applicants argue that neither Dooley et al, nor Lee et al teach testing for agents that can be used in biological warfare or terrorism. In response, the Examiner disagrees. Applicants' specification recites several agents that may pose a biological warfare or terrorism threat. At page 4 of the specification, specific agents, such as benzene, methane and petroleum-based materials, are recited. Dooley et al teach sensors to detect agents that may contaminate water supply systems. Dooley et al teach contaminating agents, such as methane, benzene, chlorinated compounds and petroleum-based fuels and others (col. 1, lines 29-37; col. 3, lines 12-29; col. 9, lines 3-15). The contaminating agents that are taught by Dooley et al to be detected in the method for detecting contaminants

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in water supply systems are some of the same agents that Applicants state are agents that may pose a biological warfare or terrorism threat. Thus, while Dooley et al may not specifically point out that biological warfare agents or agents that may be used in terrorism threats are being tested, the reference does teach detecting agents that may be used in terrorism threats. Because the agents Applicants' method seeks to detect are the same contaminants detected by the method of Dooley et al and Applicants have not provided any additional differences between the instant invention and Dooley et al, the anticipatory rejection over Dooley et al is hereby maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 571-272-1256. The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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